

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERNESTO DUGAR,
Plaintiff,
v.
RAYMOND CHAN,
Defendant.

Case No. 4:21-cv-07710-YGR

**ORDER ADOPTING MAGISTRATE JUDGE’S
REPORT AND RECOMMENDATION; ORDER
DENYING MOTION TO SET ASIDE THE
JUDGMENT; ORDER DISMISSING CASE
WITH PREJUDICE**

Re: Dkt. Nos. 9, 13

The Court has reviewed Magistrate Judge Donna M. Ryu’s Report and Recommendation (Dkt. No. 13, “Report”) recommending dismissing plaintiff’s first amended complaint without leave to amend. No party filed a timely objection to the Report. Based on the Court’s review of the record, including Magistrate Judge Ryu’s first screening order (Dkt. No. 11), the Court finds the Report correct, well-reasoned, and thorough, and **ADOPTS** it in every respect.

Additionally, on October 14, 2021, plaintiff filed a Motion to Set Aside the Judgment and Any Default, and to Quash Any Writ of Possession/Execution. (Dkt. No. 9). The motion invokes various procedural sections of the California Code of Civil Procedure related to pleading, judgments, and jurisdiction in state court. The motion also reiterates many of the factual allegations contained in plaintiff’s first amended complaint. No default or judgment had been entered against plaintiff in the proceedings before this Court at the time his motion was filed. Therefore, there was no judgment or default to provide relief from, and plaintiff’s motion is **DENIED**.

Accordingly, and for the reasons set forth in the Report:

1. The Report is **ADOPTED** in full.
2. The Motion to Set Aside the Judgment and Any Default, and to Quash Any Writ of Possession/Execution is **DENIED**.

3. The action herein is **DISMISSED WITH PREJUDICE** for failure to state a claim on which relief may be granted given the lack of subject matter jurisdiction over plaintiff's claims. 28 U.S.C. § 1915(e)(2)(B).

This Order terminates the case and Docket Numbers 9 and 13. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: December 3, 2021


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

United States District Court
Northern District of California